

DOCKET FILE COPY ORIGINAL

~~ORIGINAL~~

JUL - 9 1993

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|--------------------------------|---|------------------------|
| In re Application of |) | MM Docket No. 93-156 |
| |) | |
| Trinity Christian Center of |) | |
| Santa Ana, Inc., d/b/a TRINITY |) | |
| BROADCASTING NETWORK |) | File No. BRCT-911129KR |
| |) | |
| For Renewal of License of |) | |
| Commercial Television Station |) | |
| WHSB-TV, Monroe, Georgia |) | |
| and |) | |
| |) | |
| GLENDAL BROADCASTING COMPANY |) | File No. BPCT-920228KE |
| |) | |
| For Construction Permit |) | |
| Monroe, Georgia |) | |

To: Honorable Joseph Chachkin
Administrative Law Judge

MOTION FOR SUMMARY DECISION

Glendale Broadcasting Company (Glendale), by its attorneys, and pursuant to Section 1.251 of the Commission's rules, now asks the Presiding Judge to summarily resolve issue 1(a), the short-spacing issue specified against Glendale, in Glendale's favor.

The Hearing Designation Order, DA 93-602 (released June 14, 1993) (HDO), specified the following issue against Glendale:

1. To determine, with respect to Glendale Broadcasting Company:
 - (a) if circumstances exist which would warrant a waiver of Section 73.610 of the Commission's rules.

No. of Copies rec'd
List ABCDE

246

The issue was added because the site specified in Glendale's March 5, 1993 amendment was short-spaced by 18.4 kms to the reference point for the vacant allotment at Channel 63, Montgomery, Alabama. HDO, ¶2.

The following facts, which are established by the attached engineering declaration of John J. Mullaney, Glendale's consulting engineer, conclusively demonstrate that Glendale is entitled to summary decision as a matter of law:

1. The facility operated by Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network (Trinity), with which Glendale's application is mutually exclusive, is short-spaced to the reference point for Channel 63 at Montgomery by 18.14 km.

2. The Commission has granted a waiver for the WHSG facility operated by Trinity.

3. Glendale's proposed facility would in fact provide full protection to the Montgomery allotment.

4. If Glendale's application is granted, there will still be an area of 517 square kilometers in which an applicant for the Montgomery allotment may specify a site in full compliance with the Commission's rules.

Section 73.610(b) of the Commission's rules states that the minimum required co-channel separation in Zone II for two television stations on Channel 63 is 280.8 km. In August

The following was administered by the

kilometers is de minimis. Kenter Broadcasting Co., 62 RR 2d 1573, 1577 n.9 (1986). It follows that a change in short spacing of only .26 km is de minimis. Thus, there is no substantive difference between Trinity's short-spacing and the short-spacing proposed by Glendale.³

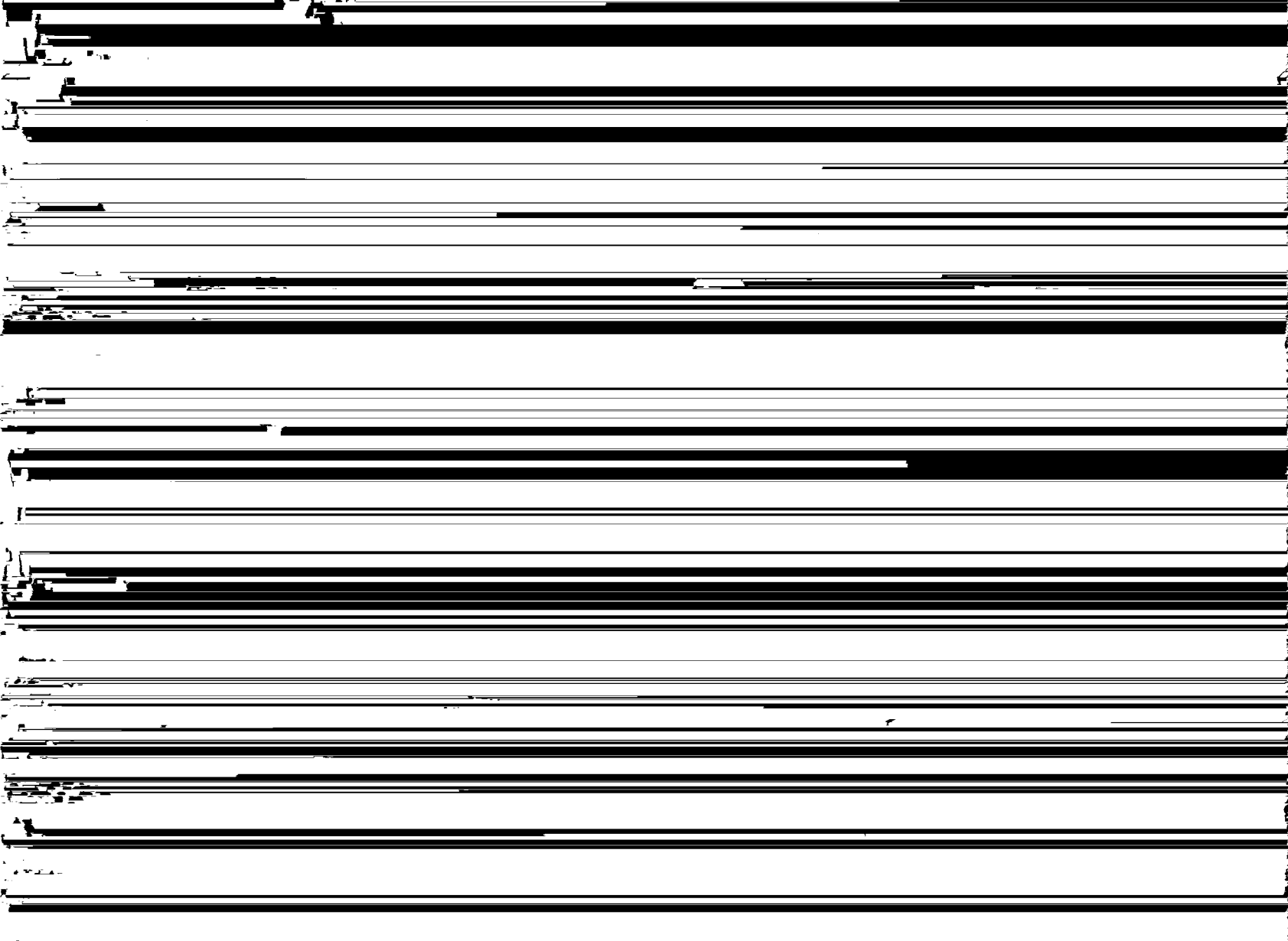
Because there is no substantive difference between the spacings Trinity offers and Glendale proposes, Glendale is entitled to a waiver of Section 73.610(b) as a matter of law. When a competing application is filed that is mutually exclusive with the renewal application that is short-spaced, the challenger has the right to be processed under the same standards. EZ Communications, Inc., 8 FCC Rcd 2448, 2451 (MMB 1993). In EZ, the Mass Media Bureau held that a renewal challenger had the right to be processed under Section 73.213 of the Commission's rules when the incumbent license had taken advantage of that same rule. The Mass Media Bureau, citing Las Vegas Broadcasting Co. v. FCC, 589 F.2d 594, 600 (D.C. Cir. 1978), held that an impermissible bias would be created if the challenger was not allowed to take advantage of the same standards the incumbent license had used. In Royce International Broadcasting, 2 FCC Rcd 1368 (MMB 1987), the

³ Even if some independent justification did have to be offered for the minimal .26 km increase in short-spacing, the fact that Glendale's new site amendment responded to the FAA's concerns would provide such justification. The staff was clearly aware that Glendale's amendment changed the spacing to the Montgomery allotment, but it still held that good cause existed for the amendment. That determination is binding upon the Presiding Judge.

Mass Media Bureau held that when an incumbent licensee was short-spaced, a challenger could also specify a short-spaced site as long as the short-spacing was not increased and there was no increase in cognizable interference.

fully spaced station operating with maximum facilities. Thus, the Montgomery allotment would be fully protected.

The second additional factor supporting a waiver is that there will be a more than adequate area within which a potential applicant for the Montgomery channel can place a transmitter site and be fully spaced to the Glendale station. The allowable site area would encompass over 517 square kilometers. Mullaney statement, P. 3. The map attached to the Mullaney Statement demonstrates that there is no



reasoned analysis of Glendale's arguments in support of a waiver, the Presiding Judge must consider those arguments.

Glendale's proposed station is legally indistinguishable from the current WHSG facilities. Glendale is entitled, as a matter of law, to the same waiver which Trinity has enjoyed the benefits of.

Accordingly, Glendale asks the Presiding Judge to summarily resolve Issue 1(a) in Glendale's favor.

Respectfully submitted,

GLENDALE BROADCASTING COMPANY

By John J. Schauble
Lewis I. Cohen
John J. Schauble

Cohen and Berfield, P.C.
1129 20th Street, N.W., # 507
Washington, D.C. 20036
(202) 466-8565

Its Attorneys

Date: July 9, 1993

JOHN J. MULLANEY
JOHN H. MULLANEY, P.E.

MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877

301 921-0115

ENGINEERING EXHIBIT EE-SUM:

**GLENDALE BROADCASTING COMPANY
MONROE, GEORGIA
MM DOCKET 93-156 BPCT-920228KC**

JULY 2, 1993

**ENGINEERING IN SUPPORT OF
A REQUEST FOR SUMMARY JUDGEMENT
OF A SHORT SPACING ISSUE**

MM DOCKET 93-156

**ORIGINAL
SIGNATURE**

MULLANEY ENGINEERING, INC.

ENGINEERING EXHIBIT EE-SUM:

**GLENDALE BROADCASTING COMPANY
MONROE, GEORGIA
MM DOCKET 93-156 BPCT-920228KC**

TABLE OF CONTENTS:

1. Declaration of Engineer
2. Narrative Statement.
3. Figure 1, Proposed Separations To - Vacant Ch. 63 Montgomery, AL
4. Figure 2, Allowable Area Map - Vacant Ch. 63 Montgomery, AL

MULLANEY ENGINEERING, INC.

DECLARATION

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an engineer in the firm of Mullaney Engineering, Inc., and that firm has been retained by Glendale Broadcasting Company to prepare an exhibit in support of a summary judgement regarding the short spacing issue.

All facts contained herein are true of his own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.


John J. Mullaney

Executed on the 2nd day of July 1993.

MULLANEY ENGINEERING, INC.

ENGINEERING EXHIBIT EE-SUM:

**GLENDALE BROADCASTING COMPANY
MONROE, GEORGIA
MM DOCKET 93-156 BPCT-920228KC**

NARRATIVE STATEMENT:

I. GENERAL:

GLENDALE BROADCASTING COMPANY

The amended site proposed by Glendale is 0.26 kilometers (0.16 miles or 853 feet) more short spaced than is the licensed facility of WHSG. Such a difference is de minimis. It should be understood that the required separation of 280.8 kilometers assumes that both stations are operating with maximum facilities.

The Monroe, Georgia, allotment is located in Zone II and, therefore, is permitted an ERP of 5000 kW at a maximum HAAT of 600 meters. The facilities proposed by Glendale are an ERP of 5000 kW-DA at an HAAT of 354 meters. The ERP in the general direction of the Montgomery allotment is less than 4000 kW. Using the co-channel interference contour (36 dBu) as a reference the Glendale facilities generate an interference contour that extends at least 26 kilometers less than the maximum permitted. Since the requested short spacing is only 18.4 kilometers it is obvious that the Montgomery allotment is fully protected.

Figure 2 is a map which illustrates the area in which a new facility can be constructed on Ch. 63 at Montgomery, Alabama. The map also indicates the radius of city grade coverage (52 km) that is possible assuming a TV facility with an ERP of 3000 kW at an HAAT of 300 meters. As can be seen, there is more than sufficient area in which a new site can be established. The permissible area exceeds 517 square kilometers (200 sq.mi.).

III. SUMMARY:

Glendale Broadcasting Company hereby requests a summary judgement regarding the proposed short spacing to a Vacant Allotment at Montgomery, Alabama. Glendale believes that its request is completely consistent with the existing waiver under which WHSG is operating. In addition, it has been shown that even with the short spacing there is more than sufficient area in which to construct a facility at Montgomery, Alabama.

July 2, 1993.


John J. Mullaney

**VACANT ALLOTMENT CH. 63
MONTGOMERY, AL**

**FCC REFERENCE LAT : 32-22-54.0
 LON : 86-18-30.0**

REQUIRED CO-CHANNEL SEPARATION: 280.8 KM

| | NAME / LOCATION | LATITUDE LONGITUDE | BEARING FROM REF. | DISTANCE (KM) |
|---|--|-------------------------------|------------------------------|--------------------------|
| | ***** | ***** | ***** | ***** |
| 1 | WHSB LICENSED SITE | 33-44-22.0 84-00-14.0 | 54.27 SHORT | 262.66 -18.14 |
| 2 | GLENDAL BROADCASTING 2/92 ORIGINAL SITE | 33-46-17.0 84-00-25.0 | 53.60 SHORT | 264.44 -16.36 |
| 3 | GLENDAL BROADCASTING 2/93 AMENDED SITE | 33-44-38.0 84-00-39.0 | 54.10 SHORT | 262.40 -18.40 |

**PROPOSED SEPARATION TO
VACANT - CH. 63 MONTGOMERY, AL
GLENDAL BROADCASTING COMPANY
MONROE, GEORGIA
MM DOCKET 93-156 BPCT-920228KC**

**MULLANEY ENGINEERING, INC.
GAITHERSBURG, MARYLAND
FIGURE 1
JULY 1993**

280.8 KM FROM
GLENDALE
AMEND. SITE



ALLOWABLE AREA MAP
VACANT - CH. 63 MONTGOMERY, AL
GLENDALE BROADCASTING COMPANY
MONROE, GEORGIA
MM DOCKET 93-156 BPCT-920228KC

MULLANEY ENGINEERING, INC.
GAITHERSBURG, MARYLAND
FIGURE 2
JULY 1993

F.C.C. REFERENCE
CHANNEL 63
MONTGOMERY, AL

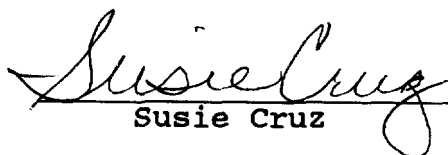
CERTIFICATE OF SERVICE

I, Susie Cruz, do hereby certify that on the 9th day of July 1993, a copy of the foregoing "Motion for Summary Decision" was sent first-class mail, postage prepaid to the following:

Robert A. Zauner, Esq.*
Gary Schonman, Esq.
Hearing Branch
Federal Communications Commission
2025 M Street, NW, Room 7212
Washington, DC 20554

Colby M. May, Esq.
May & Dunne, Chartered
1000 Thomas Jefferson Street, NW
Suite 520
Washington, DC 20007
Counsel for Trinity Christian
Center of Santa Ana, Inc.
d/b/a Trinity Broadcasting Network

Nathaniel F. Emmons, Esq.
Howard A. Topel, Esq.
Mullin, Rhyne, Emmons & Topel, P.C.
1000 Connecticut Avenue, N.W., #500
Washington, DC 20036
Co-Counsel for Trinity Christian
Center of Santa Ana, Inc.
d/b/a Trinity Broadcasting Network


Susie Cruz

*Hand Delivered